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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,  
v.

LINTON McNEAL, JR.,

Defendant and Appellant.

A159113

(Solano County Super. Ct.  
No. FCR305942)

Linton McNeal, Jr. (defendant) appeals from the trial court's victim restitution order totaling \$12,708.27. We affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

The facts relating to the underlying offense that resulted in the victim restitution order are set forth in our prior opinion, *People v. McNeal* (Apr. 17, 2018, A151905) [nonpub. opn.], of which we take judicial notice. To summarize, defendant and the victim purchased a house as joint tenants and lived there together with their children until the victim moved out in 2011. In 2014, defendant forged the victim's signature on loan modification documents. Criminal proceedings were initiated but defendant refused to sell the house to remove the victim's name from the forged loan. He ultimately

pled no contest to one count of felony forgery of a loan modification agreement (Pen. Code, § 470, subd. (d)<sup>1</sup>).

Thereafter, the parties agreed defendant would be allowed to withdraw his plea and the matter would be dismissed if he removed the victim's name from the forged loan within six months. When defendant failed to do so, the trial court—consistent with the terms of the plea agreement—suspended imposition of sentence and placed defendant on five years of probation with the condition that he serve 180 days in county jail.

At a restitution hearing, the victim asked the house to be sold so that her name could be removed from the forged loan. Defendant refused. On June 9, 2017, the trial court determined it lacked jurisdiction to order sale of the house but reserved the right to order victim restitution at a future date. The court also considered defendant's request for a stay of the probation condition requiring him to serve 180 days in county jail, made on the basis that he was complying with the other probation terms and had some surgeries scheduled that month. The court denied his request as defendant “‘worked a substantial hardship’” on the victim and was “‘deserving of a substantial penalty for the injury’” he caused the victim. Defendant appealed from the June 9 order, and we affirmed.

On December 14, 2018, defendant filed a motion to modify probation (§ 1203.3), or in the alternative to reduce his felony conviction to a misdemeanor under section 17, subdivision (b). The prosecution opposed the motion and also requested a restitution hearing. The trial court denied defendant's motion and scheduled a restitution hearing.

At the restitution hearing, attorney and real estate broker Robert Wells testified that the victim hired him to initiate a civil partition action to sell the

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<sup>1</sup> All further undesignated statutory references are to the Penal Code.

house she owned with defendant. He explained that because defendant was continuing to refuse to sell the house or take the victim's name off the forged loan, the only way for the victim to remove her name from the loan was to force a sale of the house through a partition action. Wells filed a complaint in the partition action on July 11, 2017, and, as of August 5, 2019, his attorney fees totaled \$10,282.50 and costs incurred totaled \$2,425.77.

The trial court ordered victim restitution in the amount of \$10,282.50 for attorney fees and \$2,425.77 for costs, finding the victim was entitled to recover these losses incurred as a result of the forced partition action. Defendant appeals.

### **DISCUSSION**

Defendant contends the trial court abused its discretion in ordering restitution for attorney fees and costs the victim incurred in filing a partition action. We disagree.

The California Constitution provides that crime victims have a right to receive “restitution from the persons convicted of the crimes causing the losses they suffer.” (Cal. Const., art I, § 28, subd. (b)(13)(A).) Section 1202.4 subdivision (f) provides that “in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court,” and that the restitution order “shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct.” “California courts have adopted the ‘substantial factor’ test” in determining whether the victim's loss is “‘a result of the defendant's criminal conduct.’” (*People v. Holmberg* (2011))

195 Cal.App.4th 1310, 1321, 1322.) “ “The substantial factor standard is a relatively broad one, requiring only that the contribution of the individual cause be more than negligible or theoretical.” [Citation.] Thus, “a force which plays only an ‘infinitesimal’ or ‘theoretical’ part in bringing about injury, damage or loss is not a substantial factor” [citation], but a very minor force that does cause harm is a substantial factor.’ ” (*People v. ConAgra Grocery Products Co.* (2017) 17 Cal.App.5th 51, 102.) Economic losses subject to restitution include “[a]ctual and reasonable attorney’s fees and other costs of collection accrued by a private entity on behalf of the victim.” (§ 1202.4, subd. (f)(3)(H).) The standard of proof at a restitution hearing is by a preponderance of the evidence, not proof beyond a reasonable doubt. (*People v. Millard* (2009) 175 Cal.App.4th 7, 26.)

We review a restitution order for abuse of discretion. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120-1121.) “ “ ‘When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.’ ” ’ ” (*People v. Millard, supra*, 175 Cal.App.4th at p. 26.) “ ‘[T]he court’s discretion in setting the amount of restitution is broad, and it may use any rational method of fixing the amount of restitution as long as it is reasonably calculated to make the victim whole.’ ” (*Ibid.*)

Here, there was ample evidence to support a finding that the victim incurred attorney fees and costs in a civil partition action as a result of defendant’s criminal conduct of forging her name on a loan modification agreement. Because of defendant’s fraud and repeated refusal to rectify the fraud by taking her name off the loan, the victim’s name was on a loan without her consent. Her attorney, Wells, testified she continued to suffer negative credit consequences as a result, e.g., having difficulty obtaining

favorable financing for the purchase of her own home because the forged loan was outstanding. According to Wells, the victim's only option for removing her name from the loan was to file a civil partition action to force the sale of the house.

Defendant argues "the civil partition proceeding was not directly or proximately caused by the fraudulent act of obtaining a loan modification," but rather was necessitated by the victim wanting to be "financially out of the residence while [defendant] was unwilling to sell." It appears his position is that the victim would have had to file a civil partition action in order to sell the house even if he had not forged her signature on a loan modification agreement, because he would never have agreed to sell the house. Wells testified, however, that the victim and defendant were already in default on their loan when the victim moved out in 2011, and indicated the house would have likely been sold through foreclosure if defendant had not fraudulently obtained a loan modification using the victim's name and credit.<sup>2</sup> Wells explained that a foreclosure would also have negatively affected the victim's credit but that "[s]he would have just one hit on her credit and be done," "her credit would not be tied up into this false loan," and she would not have had to file a partition action. Further, as the trial court stated in issuing its order, the victim was not—as defendant argued—"in the same position" as a result of defendant's fraud. Rather, there was "an intervening factor, and that is that the defendant . . . committed a criminal offense by forging . . . the victim's signature on a loan modification document. So the victim is not in

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<sup>2</sup> Wells testified the victim and defendant could have also attempted to refinance the loan instead of signing a loan modification agreement (which negatively affects the borrower's credit) or they could have tried to sell the house, but either option would have been difficult because of the mortgage foreclosure crisis of 2008 and the fact that property values had decreased to the point where mortgages were larger than the value of the properties.

the same position. So we can't just ignore that fact." Because there was evidence to support a finding that the victim incurred attorney fees and costs from the forced partition action as a result of defendant's criminal conduct, the victim was entitled to restitution to fully reimburse her for her loss. Accordingly, the court did not abuse its discretion in ordering restitution in the total amount of \$12,708.27.

#### **DISPOSITION**

The restitution order is affirmed.

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Petrou, J.

WE CONCUR:

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Fujisaki, Acting P.J.

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Jackson, J.